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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,698	12/05/2003	Virginia Tarpinian	2595U.001	4597
21917	7590	07/28/2006	EXAMINER	
MCHALE & SLAVIN, P.A. 2855 PGA BLVD PALM BEACH GARDENS, FL 33410			WILLIAMS, MARK A	
			ART UNIT	PAPER NUMBER
			3676	

DATE MAILED: 07/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/729,698	<b>Applicant(s)</b> TARPINIAN ET AL.	
	<b>Examiner</b> Mark A. Williams	<b>Art Unit</b> 3676	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 08 May 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12, 14-16 and 18-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 12, 14-16, 18-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 12, 14, 16, and 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelley, US Patent 4,754,379, in view of Kreutzer, US Patent 4,402,542, and in further view of Delorenzo, US Patent 6,415,732. Kelley teaches the general concept of a device for strapping a handle to an object of a cylindrical shape, such a piling (or post). Obviously, the straps are of a length sufficiently for encircling devices within the claimed range of 6 to 20 inches. Kelley teaches each of the claimed limitations except for (1) a base member constructed of flexible material, (2) the handle being translucent and including a photo luminescent material, and (3) first and second strap positions near top and bottom edges, as claimed.

Regarding (1), Kreutzer teaches the concept of a base member 2 meeting the claimed limitations, for the purpose of providing a snug fit retention of a strapped object. It would have been obvious at the time the invention was made for one skilled in the art of have included in the design of Kelley such a modification, for the purpose of providing a snug fit retention of a strapped object. The claimed method is inherent to the design.

Regarding (2), Delorenzo teaches the concept of a handle rail of photo luminescent material (an light stick 20) through a translucent material, for the purpose of being visible in the dark. It would have been obvious at the time the invention was made for one skilled in the art to include such a modification in the device of Kelley, similarly to that taught in Delorenzo, for the purpose of allowing the handle to be visible in the dark.

Regarding (3), it would have been an obvious matter of design choice to make the different portions of the device of whatever form or shape was desired or expedient. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. Such modifications are not critical to the design and would have produced no unexpected results. One reasons for doing such modifications might be for achieving a desired visually appearance.

4. Claim 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelley in view of Kreutzer. The combination does not explicitly teach the base member being of wood material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have done this, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. See also *Ballas Liquidating Co. v. Allied industries of Kansas, Inc.* (DC Kans) 205 USPQ 331. Such a modification is not critical to the design and would have produced no unexpected results. One reason for choosing wood might be availability of materials during manufacturing of the device.

3. Claims 12, 14, 16, and 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steele, US Patent 6,840,186, in view of Kreutzer, US Patent 4,402,542, and in further view of Delorenzo, US Patent 6,415,732. Steele teaches the general concept of a device for strapping a handle to an object of a cylindrical shape, such a piling (or post). Obviously, the straps are of a length sufficiently for encircling devices within the claimed range of 6 to 20 inches. Steele teaches each of the claimed limitations except for (1) a base member constructed of flexible

material, (2) the handle being translucent and including a photo luminescent material, (3) perpendicularly extending legs, and (4) first and second strap positions at top and bottom edge, as claimed.

Regarding (1), Kreutzer teaches the concept of a base member 2 meeting the claimed limitations, for the purpose of providing a snug fit retention of a strapped object. It would have been obvious at the time the invention was made for one skilled in the art of have included in the design of Steele such a modification, for the purpose of providing a snug fit retention of a strapped object. The claimed method is inherent to the design.

Regarding (2), Delorenzo teaches the concept of a handle rail of photo luminescent material (an light stick 20), for the purpose of being visible in the dark. It would have been obvious at the time the invention was made for one skilled in the art to include such a modification in the device of Steele, similarly to that taught in Delorenzo, for the purpose of allowing the handle to be visible in the dark.

Regarding (3) and (4), it would have been an obvious matter of design choice to make the different portions of the device of whatever form or shape was desired or expedient. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected

results. *In re Dailey et al.*, 149 USPQ 47. Such modifications are not critical to the design and would have produced no unexpected results. One reasons for doing such modifications might be for achieving a desired visually appearance.

4. Claim 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steele in view of Kreutzer. The combination does not explicitly teach the base member being of wood material. Use of such structure is old and well known. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have done this, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. See also *Ballas Liquidating Co. v. Allied industries of Kansas, Inc.* (DC Kans) 205 USPQ 331. Such a modification is not critical to the design and would have produced no unexpected results. One reason for choosing wood might be availability of materials during manufacturing of the device.

#### ***Response to Arguments***

4. Applicant's arguments with respect to the claims of record have been considered but are not persuasive.

Applicant argues that there is no motivation to combine the applied art, and even if there were motivation, the combination would not teach the claimed invention being applied to a piling. It is still believed that one skilled in the art would find it obvious to modify the base reference of Kelley or Steele in the manner claimed, for the purposes as cited in the above rejections. Regarding the use of the device on a piling in the environment of boats, such statements constitute intended use and do not structurally limit the invention. The piling is not considered part of the claimed invention. However, the applied prior art combination meets the claimed functional requirements by it merely being capable of such use.

Applicant argues that with respect to Steele, that the cleat requires the projections in order to function properly. However, there is nothing in the claim language, or the applied rejection, precluding the use of such projections.

Applicant argues that a cleat holding a chemical light element as claimed would not be strong enough to support the weight of a boat. The examiner believes this determination would be based on the type of plastic material used, since there are a variety of known plastics of various strengths, as well as the size and weight of the boat. Further, it is not necessary to use the prior art combination solely in such an environment.



Regarding applicant's arguments in response to the rejection of claim 15, applicant admits that it is old and well known to use wood on wood as a superior way of securing one member to another. Such an admission is further evidence of the obviousness of the claimed limitation.

### *Conclusion*

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Williams whose telephone number is (571) 272-7064. The examiner can normally be reached on Monday through Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mark Williams  
7/20/06



BRIAN E. GLESSNER  
SUPERVISORY PATENT EXAMINER